

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2197 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

KHUSHALBHAI NATHUBHAI PATEL

Versus

STATE OF GUJARAT & ORS.

Appearance:

Shri S.H. Sanjanwalla, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 27/02/96

ORAL JUDGEMENT

The order passed by and on behalf of the State of Gujarat (respondent No.1 herein) on 23rd March 1988 as also the order passed by the Urban Land Tribunal at Ahmedabad (the appellate authority for convenience) on 4th July 1988 in Appeal No. Surat-59 of 1986 are under challenge in this petition under articles 226 and 227 of the Constitution of

India. By their impugned orders, respondent No.1 and the appellate authority affirmed the order passed by the Competent Authority at Surat (respondent No.3 herein) on 29th January 1986 under sec. 8(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief). By his impugned order, respondent No.3 declared the holding of the predecessor-in-title (the deceased for convenience) of the present petitioner to be in excess of the ceiling limit by 4500 square meters.

2. The facts giving rise to this petition move in a narrow compass. The deceased filed his declaration in the prescribed form under sec. 6(1) of the Act with respect to one parcel of land bearing survey No. 571 admeasuring 17300 square meters situated at Vesu within the urban agglomeration of Surat (the disputed land for convenience). It may be mentioned at this stage that it was purchased by the petitioner together with six other persons by a registered document executed on 5th October 1965. The deceased therefore filed the declaration under sec. 6(1) of the Act for and on behalf of 7 co-owners including himself and the other six co-owners. Its copy is at Annexure H to this petition. That form was duly processed by respondent No.3. Pursuant to the draft statement served under sec. 8 of the Act, the deceased filed his objections thereto on 17th December 1985. A copy thereof is at Annexure A to this petition. Thereafter, by his order passed on 28th January 1986 under sec. 8(4) of the Act, respondent No.3 declared the holding of the deceased and the other six co-owners to be in excess of the ceiling limit by 4500 square meters. Its copy is at Annexure B to this petition. It appears that it came to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. Thereupon a show-cause notice came to be issued on 2nd April 1986 under sec. 34 of the Act calling upon the deceased to show cause why the order at Annexure B to this petition should not be revised. A copy of the aforesaid show-cause notice is at Annexure C to this petition. Thereafter, by the order passed on 23rd March 1988 under sec. 34 of the Act, respondent No. 1 affirmed the order at Annexure B to this petition. A copy of the order passed on 23rd March 1988 is at Annexure E to this petition. It appears that in the meantime the deceased had carried the matter in appeal before the appellate authority under sec. 33 of the Act. It came to be registered as Appeal No. Surat-59 of 1986. Before the fate of the aforesaid appeal could be decided, the order at Annexure E to this petition came to be passed. Thereupon the deceased approached this Court by means of this petition under sec. 226 of the Constitution of India for questioning the correctness of the order at Annexure E to this petition. By

one interim order passed by this Court on 28th June 1988 in this petition, this Court directed the appellate authority to dispose of the appeal preferred by the deceased on its own merits uninfluenced by the impugned order at Annexure E to this petition. Thereupon, by the order passed on 4th July 1988 in the aforesaid appeal, the appellate authority dismissed it. Its copy is at Annexure G to this petition. During the pendency of this petition the original petitioner breathed his last leaving behind him the present petitioners as his heirs and legal representatives. They have come on record in his place by virtue of the order passed by this Court on 1st December 1992 in Civil Application No. 305 of 190 made in this petition. By amendment, they have also questioned the correctness of the appellate order at Annexure G to this petition.

3. It is not necessary to decide the question whether or not the revisional powers under sec. 34 of the Act could have been exercised during the pendency of the appeal before the appellate authority against the order under sec. 8(4) of the Act. It is similarly not necessary to decide whether the appellate authority was justified in deciding the fate of the appeal keeping in mind the impugned order at Annexure E to this petition contrary to the direction issued by this Court in its interim order passed on 28th June 1988 in this petition. The reason therefor is quite simple. This petition will have to be remanded to respondent No. 3 for deciding the applicability or otherwise of the binding ruling of the Supreme Court in the case of Smt. Atia Mohammadi Begum v. State of U.P. and others reported in AIR 1993 Supreme Court 2465.

4. It clearly transpires from the declaration at Annexure H to this petition that the disputed land was an agricultural land. Learned Advocate Shri Sanjanwalla for the petitioner has sought its exclusion from the purview of "vacant land" as defined in sec. 2(q) of the Act by virtue of the aforesaid binding ruling of the Supreme Court. Learned Assistant Government Pleader Shri Patel for the respondents is right in his submission that certain factual position will have to be ascertained before deciding the applicability or otherwise of the aforesaid binding ruling of the Supreme Court. It is necessary to find out whether or not there was in existence any master plan answering its definition contained in sec. 2(h) of the Act, the situation of the disputed land therein, and whether or not agricultural operations were in fact carried on therein on the date of coming into force of the Act. The applicability or otherwise of the aforesaid binding ruling of the Supreme Court will depend on findings on the aforesaid three questions. It is true that the order at Annexure B to this petition has not specifically been

challenged in this petition. It cannot however be gainsaid that it has merged both in the revisional order at Annexure E to this petition and the appeal at Annexure G to this petition. When both the revisional and the appellate orders at Annexures E and G respectively to this petition are under challenge, the impugned order under sec. 8(4) of this petition can also be said to be under challenge in this petition. Even otherwise, in para 8(8) of this petition, a prayer is made for declaration that the holding of the deceased was not in excess of the ceiling limit. Its copy is at Annexure B to this petition. By his order at Annexure B to this petition Respondent No. 3 declared the holding of the petitioner to be in excess of ceiling limit by 4500 square meters. In that view of the matter, it cannot be said that the order at Annexure B to this petition is not under challenge in this petition.

5. In view of my aforesaid discussion, I am of the opinion that the order at Annexure B to this petition has to be quashed and set aside. Consequently, the impugned orders at Annexures E and G to this petition cannot also survive. They have also to be quashed and set aside. The matter has to be remanded to respondent No. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. It is clarified that it would be open to the petitioners to raise all contentions before respondent No.3 as are taken in this petition after remand.

6. In the result, this petition is accepted. The order passed by the Competent Authority at Surat (respondent No.1 herein) on 28th January 1986 under sec. 8(4) of the Act at Annexure B to this petition as affirmed both in revision and in appeal by the order passed by and on behalf of the State of Gujarat under sec. 34 of the Act at Annexure E to this petition and by the appellate order passed by the Urban Land Tribunal at Ahmedabad on 4th July 1988 in Appeal No. Surat-59 of 1986 at Annexure G respectively to this petition is quashed and set aside. The matter is remanded to respondent No. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
